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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,155	08/22/2001	Eberhard Holl	10191/1898	9226
26646	7590	05/18/2004	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			PEZZLO, BENJAMIN A	
		ART UNIT		PAPER NUMBER
				3683

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/935,155	HOLL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Benjamin A Pezzlo	3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 March 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 5-10, 12 and 13 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4, 11 and 14-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 14-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it is unclear from "if the road slope points in a direction of a future travel direction of the vehicle" if the front of the vehicle is pointed uphill or downhill.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Ono (US 6193332).

Ono discloses a method for controlling a wheel brake of a vehicle, the method including a determining a road slope 11, determining whether a parking brake is engaged 4, maintaining a braking force at a wheel independently of an extent of a brake pedal actuation (col. 3 lines 15-21), in at least one operating state with the parking brake engaged, if the road slope points in a direction of a future travel direction of the vehicle, reducing the braking force for at least one condition (col. 3 line 11, "predetermined time").

5. Claims 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ota et al. (US 6199964).

Ota et al. disclose a method for controlling a wheel brake of a vehicle, the method including a determining a road slope (see Fig. 5, step 201), determining whether a parking brake is engaged (see Fig. 5, step 202), maintaining a braking force at a wheel independently of an extent of a brake pedal actuation (see Fig. 5, step 205), in at least one operating state with the parking brake engaged, if the road slope points in a direction of a future travel direction of the vehicle, reducing the braking force for at least one condition (see col. 6 lines 10-15).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 14-17, 1-4, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buschmann et al. (US 6086515) in view of Kubota et al. (US 4717207).

Buschmann et al. disclose a method for controlling a wheel brake of a vehicle, determining whether a parking brake is engaged (see Fig. 5, step 202), maintaining a braking force at a wheel independently of an extent of a brake pedal actuation (see Fig. 5, step 205), in at least one operating state with the parking brake engaged, if the road slope points in a direction of

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a future travel direction of the vehicle, reducing the braking force for at least one condition (see col. 6 lines 10-15).

Buschmann et al. fail to disclose the method including determining a road slope (see Fig. 5, step 201). Instead, Buschmann et al. use wheel speed an indicator of road slope. However, Buschmann et al. disclose use of the device as a hill holder. Accordingly, It would have been obvious to one of ordinary skill in the art to which the invention pertains at the time the invention was made to have used a slope sensor according to Kubota et al. in a Bushmann et al. hill holder in order to allow for braking only when the front of the vehicle points uphill, i.e. to prevent roll back.

Re claims 1-4 and 11, see Fig. 2 of Buschmann et al.

### *Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin A Pezzlo whose telephone number is (703) 306-4617. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on (703) 308-3421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Benjamin A Pezzlo  
5/13/04

Benjamin A Pezzlo  
Examiner  
Art Unit 3683

BAP  
May 13, 2004